IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO.6735 OF 2002

Amba Chawl Wadi Rahiwasi Seva
Sangh, registered society, having
address at Jahangir Merwanji Street
Parel, Mumbai - 400 012 ... Petitioners

V/s.

1. Municipal Corporation of Greater
Mumbai, having office at Mahapalika
Building, Mahapalika Marg, Fort, Mumbai

2. Chief Officer
Slum Rehabilitation Authority
5th floor, Grihnirman Bhavan
Bandra (East), Mumbai - 400 051

3. Mahalaxmi Cooperative Housing
Society Limited, 138, B-1/74
Merwanji Ambawadi, Jahangir Merwanji
Street, Parel, Mumbai-12

4. Faithful Developers
104, Navrang Shopping Centre
Gokhale Road, Thane (W)

5. The Additional Collector
Old Customs House, Fort, Mumbai.

6. The State of Maharashtra ... Respondents

Mr.R.V. Govilkar with C.A. Talashikar for Petitioners

Mr.N.V. Walawalkar for Respondent No.1

Mr.G.D. Uatangale i/b Utangale & Co. for Respondent No.2

Mr.S.G. Aney with Mr.A.K. Patil, Mr.Amol Wagh and

Mr.P.Jadhav for Respondent No.3

Mr.P.D.Prasad Rao for Respondent No.4

Mr.R.M. Patne, AGP, for Respondent No.5

CORAM: **V.G. PALSHIKAR &**
SMT.NISHITA MHATRE, JJ.

DATED: **MARCH 2, 2005**

JUDGMENT (PER NISHITA MHATRE, J.):

. This Petition is a desperate attempt by some slum dwellers to stall a Slum Rehabilitation Project under which housing would be provided to 132 slum dwellers. The Petition challenges the Scheme of Slum Rehabilitation which has been approved by the Municipal Corporation of Greater Mumbai and the Slum Rehabilitation Authority. The Petitioners by this Petition further seek a Mandamus for declaring that the order dated 19.12.2001 passed by the Additional Collector of the Maharashtra Slum Areas (Improvement, Clearance and Rehabilitation) Act (for short, 'the Slum Act') under sections 33 and 38 and the order dated 30.9.2002 passed under section 35 of the Slum Act void and illegal.

2. The Petitioners claim to be a registered society representing the residents on a plot owned by Respondent No.1 (for short, hereinafter referred to as 'the Corporation'). By a Resolution, the Corporation decided to redevelop the property on which about 156 hutments were in existence. The Corporation put up a proposal for developing the area and rehabilitating the slum dwellers residing in the huts on the property. A society known as Mahalaxmi Cooperative Housing Society

Limited, Respondent No.3 herein and M/s.Faithful Developers, Respondent No.4 herein submitted a proposal to develop the property. The entire property bearing CTS No.138-B-1/74 is reserved for a public purpose, that is, for municipal staff quarters and for widening of the existing road. The Corporation by a resolution had approved of the proposed construction of the Nurses' quarters for K.E.M. Hospital on this plot with an understanding that the existing eligible tenaments on the plot would be housed at the same site. The slum has been censused in 1976 and pitch holder cards have been issued to the slum dwellers. Subsequently a census was undertaken in 1985 and then in 1995, and it was found that there were 132 eligible tenaments on the plot who were entitled to accommodation by way of rehabilitation.

3. A rehabilitation scheme proposed by Respondent No.3-Society under Regulation 33(10) of the Development Control Regulations, 1991 framed under the Maharashtra Regional Town Planning Act, has been sanctioned. Out of 156 tenaments 132 were found eligible as they were in existence prior to 1995, when the census was conducted. 116 of those eligible who have executed agreements with Respondent No.3 have agreed to shift into new premises when constructed. 80 persons have already shifted to transit camps. It appears members of the Petitioners were obstructing the Project. Notices for eviction were

therefore, issued to them. All the affected parties, including the 76 slum dwellers who were obstructing the scheme were heard by the Competent Authority. A notification was issued on 25.10.2001 by the State Government in exercise of its powers under section 3 of the Slum Act, under which the Additional Collector was appointed as the competent authority for lands in Mumbai city. On 19.12.2001, an order was passed under sections 33 and 38 of the Slum Act, by the Competent Authority evicting those occupants who had not vacated the premises. Immediate action was directed in accordance with the provisions of section 38 of the Slum Act so that the redevelopment of the property could be carried out without any hindrance. An appeal preferred under section 35 of the Slum Act was not entertained. Aggrieved by these orders under sections 33 and 35, the Petitioners have approached this Court under Articles 226 and 227 of the Constitution of India.

4. Mr.Govilkar, learned Counsel for the Petitioners, submits that the plot of land has not been declared as a "slum area" as required under section 4 of the Slum Act. He submits that unless there is a declaration by the competent authority that an area is a slum, no redevelopment or rehabilitation under this Act can be undertaken. He places reliance on the judgments of a learned Single Judge of this Court in the cases of

Shri Balraj Tulsidas Pillai & Ors. v/s. State of Maharashtra & Ors., **2003(4) ALL MR 584** and *Ramkali Sitaram Kushawaha (Kachhi) & Ors. V/s. The Deputy Collector (ENC) & Competent Authority & Ors.*, **2004(2) ALL MR 320**. According to the learned Counsel, the order passed under sections 33 and 38 is illegal as the area has not been declared slum. He further submits that since the provisions of the Act cannot be invoked, the area not having been declared a slum under section 4, the notices issued and orders passed under sections 33 of the Act are illegal and are, therefore, required to be quashed. The learned Counsel then submits that since the lands are owned by the Corporation, the competent authority could not have been the Additional Collector nor could the appellate authority have been the Commissioner, Konkan Division and, therefore, the orders have been passed without any jurisdiction. According to the learned Counsel, a proper construction and interpretation of Regulation 33(10) of the D.C. Regulations postulates that only an area which is declared a slum prior to 1971 or is declared a slum under the Slum Act would constitute a slum and since the area in the present petition has not been declared a slum prior to 1971 or under the Slum Act, the rehabilitation of the area cannot be undertaken. In support of this submission, he relies on the judgment of a Division Bench of this Court in *Relief Road Housing*

Societies Association & Anr. v/s. State of Maharashtra & Ors., **2002 (1) Bom.C.R. 15**.

5. Mr.Walawalkar, learned Counsel for the Corporation pointed out that under Regulation 33(10) r/w Appendix IV of the Development Control Regulations, the Corporation had the authority to decide to develop a plot which was a censused slum and to rehabilitate the slum dwellers. Once the area had been censused as a slum, the machinery available under the Slum Act was put into operation in order to evict the unauthorised slum dwellers. He submits that there was no need to declare the area as a slum under section 4 of the Slum Act since the provisions of sections 33 and 38 have been invoked only in order to avail of the machinery available under the Slum Act.

6. Mr.Aney, learned Counsel appearing for Respondent No.3, submits that the Petitioners have suppressed vital facts from this Court. According to him, the Petitioners have already instituted a Civil Suit before the Bombay City Civil Court for the same relief. He points out that 70% of the slum dwellers are members of Respondent No.3 and have consented to the rehabilitation project to be undertaken by Respondent No.4. Persons residing in 80 tenemants have already shifted to the transit camp. He urges that the rights

of the individual slum dwellers can always be decided in the pending suit, for which the rehabilitation project should not be stalled.

7. Development Control Regulation 33(10) permits redevelopment of slums whose inhabitants' names and structures appear in the electoral roll prepared on or before 1.1.1995. A slum has been defined in 33(10)II to mean those areas which have been censused or declared and notified in the past or under the Slum Act after it was enacted in 1971. Therefore, a slum is not just an area which has been declared a slum under section 4 of the Slum Act. The issuance of a notification under section 4 of the Slum Act is not a prerequisite for an area to be considered a slum rehabilitation area. Censused slums have also been defined as those which are located on lands belonging to the government or any undertaking of the government or the Brihanmumbai Municipal Corporation and which have been censused in 1976, 1980, 1985 or prior to 1.1.1995. There is no dispute that the present area is owned by the Corporation. Nor is there any dispute that the slums located thereon have been censused prior to 1995.

8. The submission made on behalf of the Petitioners that the provisions of the Slum Act cannot be invoked unless there is a declaration made under section 4 that

the area is a slum area, is without merit. The provisions of sections 33 and 38 of the Slum Act have been invoked by the Respondents in order to evict the slum dwellers from the area which is a censused slum. It is only the machinery which is available under the Slum Act that is being utilised for the purposes of removing the occupants from a land which is declared a slum area. In fact under the D.C. Regulations steps can be taken to evict those hutment dwellers who do not join a rehabilitation project willingly. The provisions clearly stipulate that if the hutment dwellers do not join the scheme within 15 days after a slum rehabilitation project has been approved, then action under the provisions of the Slum Act including sections 33 and 38 as amended from time to time can be taken against the hutments. All those who do not join the project lose the right to any built up tenament and their tenament can be taken over by the slum rehabilitation authority and can be used for accommodating those slum dwellers from other slums who cannot be accommodated *in situ.* The Corporation on 24.5.1996 issued a letter of "no objection" after verifying the proposal of Respondent No.3 for rehabilitation of the slum area. After completion of various other formalities the Slum Rehabilitation Authority approved the project on certain terms and conditions. The impugned orders have been passed after

the slum rehabilitation project was approved by the Slum Rehabilitation Authority (SRA). Factually what has been done is recourse taken to the provisions of sections 33 and 38 of the Slum Act for the purposes of implementing the development plan or project undertaken under D.C. Regulations in relation to a censused area. That being permissible in law, mere use of machinery provided under the Slum Act cannot be faulted. Therefore, there is no substance in the contentions of the petitioners that without a notification under section 4 of the Slum Act the provisions of the Act cannot be used at all.

9. The next submission made on behalf of the Petitioners was that the impugned order under section 33 and 38 is passed by the Additional Collector who had no power or jurisdiction to do so. According to the learned Counsel for the Petitioners, since the land is owned by the Corporation, the Corporation itself would be the Competent Authority to take action against the slum dwellers; the additional Collector was not the competent authority to pass the impugned orders. The notification under which action has been taken has been issued by the State Government on 25.10.2001. A bare perusal of this notification indicates that the Additional Collector has been notified as the Competent Authority for all lands in Mumbai city.

10. The Additional Collector has acted in accordance with sections 33 and 38 of the Slum Act, which is the machinery used for evicting those slum dwellers who did not joint the project. Therefore, the Additional Collector had acted in accordance with law and consistent with the jurisdiction conferred upon him under the provisions of sections 33 and 38 of the Slum Act. The appeal preferred by the Petitioners was rejected by the Administrator and Commissioner, Konkan Division on 30.9.2002. This authority has also acted within its powers conferred under section 35 of the Slum Act. We, therefore, see no reason to accept this submission of the learned Counsel for the Petitioners as the impugned orders are passed in exercise of the jurisdiction conferred on the competent authority under sections 33 and 38 of the Slum Act.

11. Another submission made on behalf of the Petitioners is that those slums which are declared prior to 1971 or are declared under the Slums Act only qualify to be called slum area. We would like to examine this submission in the light of the provisions of the D.C. Regulation 33 which reads as under:

. Development Control Regulation 33(1)(II)(i) is as under:

(i) For this purpose, slums shall mean those

> censused, or declared and notified, in the past or hereafter under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971. Slums shall also mean areas/pavement stretches hereafter notified as Slum Rehabilitation Areas.

It is very clearly mentioned in the Regulation 33 quoted above that a slum under the Regulation 33 means (i) which is already censused prior to coming into force of Slums Act, 1971; (2) Slums declared and notified as such under any other appropriate law which can include the M.R.T.P. Act (3) Slum declared and notified under the provisions of the Slums Act, 1971. There is nothing in this regulation therefore to infer that after coming into force of the Slums Act, 1971 all other statutory provisions or regulations or rules would stand abrogated in so far as declaration and development of slums is concerned. In the present case the land in question is owned by the Corporation. It was censused in 1976, it is being developed under the D.C. Regulations framed under the M.R.T.P. Act and it therefore, squarely falls in the censused category noted by us above. The "comma" after the word "censused" would indicate that if a slum is censused, it need not be declared and notified under the Slum Act of 1971. Therefore, the submission made by the learned Counsel that only those areas which have been declared and notified as slums under the Slum Act of 1971 or any previous legislation would qualify as a slum is fallacious and therefore, cannot be accepted.

12. A slum rehabilitation project which is proposed by the cooperative housing society of hutment dwellers on the site is to be preferred if 70% or more eligible hutment dwellers in a slum agree to join a rehabilitation scheme. In the present case, according to Respondent No.3 which is another society of hutment dwellers on the site, out of the 132 eligible tenaments, 116 have executed agreements with the society. Eighty persons have already shifted to transit camps while 27

huts have been demolished. The affidavit filed on behalf of the Slum Rehabilitation Authority confirms this position. It has accepted the proposal of Respondent No.3 society and verified that 70% of the slum dwellers accept the proposal. In fact the Corporation has issued an Annexure II certificate on 19.11.1997 as also the I.O.D. on certain terms & conditions. Issuance of these documents has not been challenged in the present petition. The Petitioners dispute the number of persons claimed by the respondent-society to be their members. The claims of the occupants of each of the tenaments are not being considered by us. These are disputed questions which cannot be decided by this Court in the exercise of its writ jurisdiction. However, these aspects can always be considered in the suit pending before the City Civil

Court. Some of the members of the Petitioners have already filed S.C. Suit (Lodging) No.1171 of 2001 against Respondent No.4 and have sought mandatory injunction against Respondent No.4 herein from dispossessing them. An earlier suit filed by the members of Respondent No.3 being Special Civil Suit No.4459 of 2001 is also pending before the City Civil Court. This Suit has been filed for a declaration and for injunction restraining the Petitioners herein from carrying out any activity to the prejudice of the slum rehabilitation scheme. A Chamber Summons was filed by 109 applicants who claim to be members of the Petitioners herein for being joined as a party to the suit. This Chamber Summons has been dismissed by the City Civil Court. On 12.7.201, an order was passed in the Notice of Motion taken out in that suit restraining the defendants in that suit that is the Petitioners herein from interfering in the progress of the Slum Rehabilitation and Development scheme. This fact has been suppressed by the Petitioners in the present petition. Apart from this, the suit bearing Lodging No.1171 of 2001 is for essentially the same reliefs as are claimed in this petition. We are therefore of the view that the Petitioners deserve no relief for having suppressed these material facts from the Court.

13. Turning to the judgments cited on behalf of the

Petitioners, we find that none of them are relevant or applicable to the facts before us. Reliance was placed on paragraph 20 of the judgment in the case of *Relief Road Housing Societies Association & anr*. (supra) to submit that a notification declaring the area a slum under section 4 of the Slum Act must be issued prior to any actions being taken or D.C. Regulation 33(10) being invoked. This was a case where a public interest litigation was filed for removal of encroachers from roads and pavements in a certain area of Mumbai suburbs. The Division Bench has observed thus:

> 20. We have considered the said exhibit and Schedule Two certificate produced by respondent No.9, and we must say that the comments of the petitioners are fully justified. We are not satisfied on a perusal of Exhibit 'E-1' to hold that it establishes that the slum is a censused slum. If the slum is not a censused slum, then the question will be whether the same has been declared or notified as a slum under the Slum Act. There appears to be no material on record to show that the slums in question in the Daulat Nagar area have been notified or declared under the Slum Act. Moreover, there is no material on record to satisfy the Court that the slums fulfil the conditions laid down in section 4 of the slum Act so that they can be deemed to be Slum Rehabilitation Area. Though there is a mention in the affidavit filed on behalf of added respondent No.9 that slum rehabilitation schemes on several plots in Daulat Nagar falling under Town Planning Schemes have been sanctioned, the sanctioned schemes have not been brought on record. The question of implementing the General Slum Rehabilitation Scheme in the area in question will arise only if the Court is first able to find out whether the slums are censused slums or whether they have been declared as slums or slum rehabilitation area under the Slum Act. As we have pointed out earlier, the entire complexion of the case has changed after an affidavit-in-reply was filed by

the added respondent No.9, the Slum Rehabilitation Authority, which was brought on record various amendments, notifications and schemes for rehabilitation of slums-dwellers. We must say that the questions that arise in view of the amendment of the Development Control Regulations and the framing of the Slum Rehabilitation Scheme are of great importance. In the instant writ petition, the petitioners had no knowledge of these amendments and schemes when the writ petition was filed, and even the other respondents did not throw any light on this aspect of the matter. Now, we find that it may not be advisable for this Court to go into the important issues that arise in the absence of sufficient reliable material on record. On the basis of incomplete facts, grave injustice may result if we proceed to examine the very important issues that arise in this case. The question as to whether the amendment of Regulation 33(10) is valid, whether the Slum Rehabilitation Scheme is framed in accordance with law, whether the right of slum-dwellers will over-ride the rights of law-abiding citizens, who are tax and rate-payers, and whether the amendment of the Regulations and the framing of the Scheme to achieve this objective can be upheld or should be struck down as being unreasonable or arbitrary, require serious consideration. There is no material to show whether the slums in question are censused, or whether they were ever declared as slums or slum rehabilitation area. Nor is there any material to show whether they fulfil the conditions under section 4 of the Slum Act, so that if they are shown to be censused, they can be deemed to be slum rehabilitation area even without a formal declaration. The slum rehabilitation schemes said to have been sanctioned on several plots in the area covered by Town Planning Schemes are not on record. On the basis of the record as it is before us in this writ petition, we are not inclined to go into these important issues, and we, therefore, leave it to the parties to agitate these matters in appropriate proceeding, where the parties may go fully prepared to agitate these issues. However, there are certain directions that we can give in this writ petition, keeping in view the Slum Rehabilitation Scheme. No one has contended before us that encroachments can be permitted on the roads and pavements. Even if such encroachers may be found to be entitled to rehabilitation, that would justify their

> presence on the roads, footpath, etc. Similarly, in terms of the General Slum Rehabilitation Scheme, in areas covered by Slum Rehabilitation Scheme, any plot under reservation, being less that 1000 square metres in area, has to be cleared of these encroachments. Only such plots which have an area of 1001 square metres or more may be available fore rehabilitation of slum-dwellers if the encroachment is over an area which is more than 25% of the total area of the plot. Since we have not expressed any opinion on the validity of the General Slum Rehabilitation Scheme, nor have we expressed any opinion as to its applicability to the Town Planning Scheme, nor have we expressed any opinion as to its applicability to the Town Planning Scheme areas, we shall, for the present, proceed on the basis that they are valid. This is, of course, subject to the right of the parties to challenge their validity in a duly constituted proceeding.

14. This judgment, in our opinion, does not support the case of the Petitioners at all. It, in fact, fortifies our view. The Division Bench has noted that a slum could be one which is censused or one which is declared or notified under the Slum Act. There was no material on record in that case to show that the area was a censused slum or a notified slum under the Slum Act. In para 21 it has been observed that nothing in the judgment should be construed as an expression of the opinion of the Court on issues relating to the validity of the impugned notifications conferring the right of the rehabilitation of slum dwellers or the various amendments to the D.C. Regulations or the Slum Rehabilitation Scheme or the decisions taken thereunder.

15. In the case of Balraj Tulsidas Pillai (supra), a learned Single Judge of this Court was construing some of the provisions of the Slum Act including section 14(1) of the Act which relates to the acquisition of land by the State Government to improve a slum area. Similarly, in the case of *Ramkali Sitaram Kushawaha* (supra), provisions of Section 14 and other related sections were considered. It has held that in case of acquisition of land under section 14(1), there must be a specific notification under section 3(C). A mere declaration of the general scheme for rehabilitation for slum dwellers under section 3(B) would not according to the learned Judge ipso facto amount to declaration of a specific area as a slum rehabilitation area. In the present case, we are not concerned with section 14(1) of the Slum Act as there is no case made out of acquisition of the land. These judgements are, therefore, of no avail to the Petitioners.

16. The impugned orders cannot be faulted. They have been passed by the Competent Authority and the Appellate Authority in exercise of the jurisdiction conferred upon them. The slum area is a censused slum and is being developed and the slum dwellers are being rehabilitated in accordance with the Development Control Regulations and other relevant provisions of law.

17. In these circumstances, we are of the view that the writ petition deserves to be dismissed. Rule discharged. No order as to costs.

18. In view of the dismissal of the Petition, nothing survives in Civil Application No.2582 of 2004 and the same is disposed of accordingly.